

In re) Fair Hearing No. 10,627
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Appeal of)

The petitioner appeals the decision of the Department of Social Welfare denying him General Assistance to pay for temporary shelter.

1. The petitioner is a thirty-three-year-old unemployed man who until recently lived in his mother-in-law's apartment in Barre with his twenty-nine-year-old wife. They have no children in their custody and at the time of his request for assistance, the petitioner did not claim to be physically unable to work.

2. During the month of June, the petitioner's Barre apartment was broken into on two occasions by persons who threatened the petitioner, beat him up, and shot him with a Bee Bee pellet sending him to the hospital. There is no evidence that the petitioner's landlord was involved in any way in these incidents or that the break-ins were motivated by a desire on the landlord's part to drive him from the apartment. Both incidents were reported to the police and were being handled by the State's Attorney.

3. After the second attack, and what he felt was a

lack of police protection, the petitioner decided that he could no longer stay in his apartment and went to talk with the Barre welfare office director to see what assistance he might be able to get to leave town and move to White River Junction where he felt he might more easily find a job. The director investigated the existence of a shelter for homeless persons in that area and discovered that the shelter would be closed for renovations until July 29th. No other assistance was offered by the Department.

4. In spite of this news, the petitioner who had some money, decided to go to White River Junction with his wife and pay for a motel in town. After two weeks, when his money ran out, he applied for assistance with temporary housing at the Hartford office of the Department of Social Welfare. He was denied in writing on July 15, 1991 because he and his "wife are able bodied, have no minor dependents and do not have two employment barriers. . ." and did not have a catastrophic situation under GA/EA guidelines.

5. The petitioner appealed and during the pendency of his appeal was able to receive another week's motel rent from a community action organization. However, after that week, the petitioner asked for an expedited hearing on his denial. After an offer of proof was made by his attorney (who has since withdrawn) which was accepted as true, the hearing officer determined that the petitioner and his wife were ineligible for General Assistance. The Department offered to transport the petitioner and his wife to another

town where a shelter was open but the petitioner declined because he wished to continue his job search in White River Junction.

6. Following the expedited hearing, the petitioner continued to live at the motel. The petitioner asserted at his hearing on July 31, 1991, that he was two weeks behind in the rent and had not been able to find a job. Although the local shelter for homeless persons was scheduled to reopen two days before the hearing, the petitioner had apparently made no attempt to seek shelter there. He also asserted for the first time that he has a problem lifting and some limitation on walking but produced no medical evidence to support his allegation. The petitioner admitted that his limitations did not pose a real problem for his employment. It cannot be found based on the petitioner's testimony that he or his wife have any substantial physical or mental impediment to gaining employment.

7. The petitioner is a high school graduate with one year of college as an accounting major who, until December of 1990, worked regularly as a tow truck driver and before that for a Veterans' organization. Since that time, his main difficulty in obtaining another job has been his lack of a vehicle and lack of a driver's license which was suspended late last year. The evidence does not support and the petitioner makes no claim that he is in an alcohol or drug treatment program or that he was released from a mental health institution in the last six months.

ORDER

The Department's decision denying GA benefits is affirmed.

REASONS

The Department of Social Welfare's General Assistance program exists to meet the emergency needs only of eligible families when "such need cannot be met under any other Department program." W.A.M. § 2600A. The regulations provide further that:

Except as specifically provided in 2602 (catastrophic situations), General Assistance shall be granted to applicants who have no minor dependents included in their application only if they:

1. Are not able-bodied (see 2601 p.1) and meet the conditions of C (1-6) below, or
2. Are able-bodied, have two or more of the employment barriers as defined in 2607.1(c), and meet the conditions of C (1-6).

W.A.M. § 2600(B)

The petitioner appears from the evidence to be an able-bodied person as that term is defined in the regulations--one who has "no physical or mental impairment which prevents him from working." See W.A.M. § 2601. If he is to be found eligible for "emergency" assistance, he must thus have two of the employment barriers listed in the following regulation:

(c.) Individuals who have two or more of the following employment barriers are exempted from the 20-hours job seeking requirement but remain subject to all other employment requirements in this section:

1. Age 40 or over;
2. Eighth-grade education or less;

3. Inability to read or write;
4. Lives 10 or more miles from a town of 2500 or more and has no available transportation, and cannot reasonably be expected to relocate within 30 days;
5. Has not for six consecutive months or more in the last five years been either employed by one employer or been a full-time student;
6. Released within 6 months from a mental health institution or hospital unit;
7. Participating in a state or federally funded drug or alcohol treatment program.

W.A.M. § 2607.1

The evidence in this matter does not support a finding that the petitioner meets any of the above criteria. He is under 40, has the beginning of a college education, lives in a large town, had long term regular employment before last winter and is not in a drug program nor recently discharged from a mental institution. Therefore, the petitioner can only be assisted if his facts meet the definition of "catastrophic situation".

The regulations define a "catastrophic situation" as follows:

Any applicant who has exhausted all available income and resources and who has an emergency need caused by one of the following catastrophic situations may have that need which is indeed caused by the catastrophe met within General Assistance standards disregarding other eligibility criteria. Subsequent applications must be evaluated in relation to the individual applicant's potential for having resolved the need within the time which has elapsed since the catastrophe to determine whether the need is now caused by the catastrophe or is a result of failure on the part of the applicant to explore potential resolution of the problem:

- a. Death of a spouse or minor dependent child; or
- b. A court ordered or constructive eviction due to circumstances over which the applicant had no

control. An eviction resulting from intentional, serious property damage caused by the applicant; repeated instances of raucous and illegal behavior which seriously infringed on the rights of other tenants of the landlord or the landlord himself; or intentional and serious violation of a tenant agreement is not considered a catastrophic situation. Violation of a tenant agreement shall not include nonpayment of rent unless the tenant had sufficient financial ability to pay and the tenant did not use the income to cover other basic necessities or did not withhold the rent pursuant to efforts to correct substandard housing.

- c. A natural disaster such as flood, fire or hurricane; or
- d. An emergency medical need. Actions which may be evaluated as emergency in nature include, but are not limited to, the following:
 - 1. Repair of accidental injury;
 - 2. Diagnosis and relief of acute pain;
 - 3. Institution of treatment of acute infection;
 - 4. Protection of public health; or
 - 5. Amelioration of illness, which if not immediately diagnosed and treated could lead to disability or death.

W.A.M. § 2602

Constructive eviction is further defined as follows:

Constructive Eviction Defined

Constructive eviction is defined as any disturbance caused by a landlord or someone acting on his behalf, which makes the premises unfit for occupation. The motive for the disturbance, which may be inferred from the act, must have as its intent the eviction of the occupant. No intent needs to be considered when heat or utilities or water are not provided within a reasonable period of time and there is an agreement to furnish these items.

W.A.M. § 2602.1

The petitioner argues that he was for all practical purposes evicted from his apartment by the persons who assaulted him in June of 1991. He asserts that his

apartment was not safe for him and his wife to live in and that the police were unable to protect him there. He admits that those who assaulted him were not his landlord or acting on his landlord's behalf, but argues that, nevertheless, the end effect was his inability to stay in the apartment.

What happened to the petitioner was no doubt "catastrophic" for him as that term is commonly understood and he may indeed have been unable to live in his mother-in-law's apartment due to the actions of his assailants.¹ However, the terms "catastrophic" and "constructive eviction" are specifically defined in the Department's regulations to include only the inability to live in an apartment due to the action (or inaction) of a person having control over the premises, i.e., the landlord or his agent and do not extend to the need to vacate an otherwise habitable dwelling due to circumstances unrelated to the conditions in the dwelling itself, however compelling those circumstances might be. The Department's regulation only covers persons who are homeless for very specific reasons, and not persons in general who are without housing. Such exclusions are usually justified by the Department based on the need to target persons with certain kinds of problems based on fiscal limitations. While it is unfortunate for the petitioner that his "catastrophe" does not fall into the category of catastrophes chosen for assistance, the Department's decision not to assist the petitioner in this circumstance is based squarely on its regulations and thus

must be upheld. 3 V.S.A. § 3091(d).

FOOTNOTES

¹If the local shelter for homeless persons is indeed open again, the petitioner's situation may be less catastrophic than he asserts. The petitioner appeared at the hearing to be particularly concerned about the two weeks of back rent owed.

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